

ST 02-0033-GIL 02/06/2002 TELECOMMUNICATIONS EXCISE TAX

The Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. (This is a GIL).

February 6, 2002

Dear Xxxxx:

This letter is in response to your letter dated April 9, 1999 that we received in our office on May 7, 1999. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of AAA, BBB hereby requests a letter ruling with regards to sales and use, and excise taxes along with infrastructure maintenance fee, on service provided by AAA, pursuant to 2 Ill. Adm. Code 1200.

FACTS:

AAA intends on providing voice, data and cable television services to long-haul truck drivers in the convenience and privacy of their trucks while parked at truckstops. AAA markets and sells subscriptions to its network to fleet trucking companies and individual long-haul truck drivers.

Subscribers to the service connect to the Network by attaching standard telephone and coaxial cable television cable (which AAA provides to each new subscriber) to outlets, which are installed in the ground at each parking stall at a truckstop. The telecommunication service provided can include (1) local and long distance calling, incoming calls, voice mail services and driver location; (2) data connectivity; (3) access to the Internet; and (4) other telecommunication services, including wake up calls and the ability to offer call waiting and call conferencing. The cable television service offers eighteen cable viewing channels, a Pay-Per-View channel and a dedicated advertising channel.

AAA provides its telecommunication and entertainment services on a subscriber basis. Subscribers first pay a \$10 membership fee for which they receive a membership card and a starter kit. The starter kit contains a telephone, twenty-five feet of telephone cord,

twenty-five feet of coaxial cable, an owner's manual, location guide and driver referral cards. The subscriber can sign up for an on-going subscription deducted automatically from their credit card or checking account for \$30 per month, or purchase a monthly or daily usage card for \$30 or \$5, respectively, from vending machines located at each truckstop. Each subscription plan has various benefits associated with it. Extender kits are available and sold separately to the truckstop for resale to the truck drivers. An extender kit contains fifty feet of coaxial cable, fifty feet of telephone cable, a telephone adapter and a cable connector.

The subscriber accesses the AAA Network by plugging the coaxial and telephone cable into the outlet at the parking stall at a truckstop. The subscriber dials '*' and logs on to the AAA Network. A computerized voice response prompts the subscriber to enter the subscriber's membership number. If the subscriber is a daily or monthly user, the computer prompts the user to enter the subscriber's daily or monthly card number. If the subscriber is in good standing, service is activated.

Individual member can prepay for long distance telephone time by charging directly to their existing account. All subscribers are able to prepay for long distance telephone time by charging to the credit card. Subscribers can purchase a 'value card' for long distance or other Network services, such as the Pay-Per-View channel. Value cards are sold through vending machines at each truckstop. Each value card can be used for only one type of service, long distance OR pay-per-view.

....

Based on the information provide, please provide clarification of the taxability of the following questions:

1. What tax should be assessed and how should it be applied to membership fees?
2. What tax should be assessed and how should it be applied to the subscription fees, if these fees do not separately state how much is for telecommunication service and how much is for cable television service?
3. What tax should be assessed and how should it be applied to those multi-use cards purchased from vending machines if no specific amount is allocated to cable television or telecommunication service?
4. What tax should be assessed and how should it be applied to the sale of extender kits?
5. What tax should be assessed and how should it be applied to the starter kit equipment that is given away to fleet and individual subscribers?
6. Is there a distinction, with relation to taxation, in Internet service, data connectivity, voice mail, wake up call service and driver locator? How are these taxed if services are paid for in advance, not knowing what service will be used?

If you have any questions, or require further information, please feel free to contact me.

The Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. The tax imposed thereunder shall be collected from the taxpayer by a retailer maintaining a place of business in this State and remitted to the Department, 35 ILCS 630/5.

The Act defines gross charges as including amounts paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by retailers, 35 ILCS 630/2(a). Please refer to 86 Ill. Adm. Code 495.100, enclosed.

As a general proposition, if the charge for any item is not separately identified and disaggregated in the retailer's records from charges that are subject to Telecommunications Excise Tax, the entire amount will be subject to tax. For example, charges for voice-mail or answering services are subject to the Telecommunications Excise Tax unless they are disaggregated from transmission charges and separately identified in the books and records of the telecommunications retailer, 86 Ill. Adm. Code 495.100(c).

As noted in Section 495.100(c), charges for automated information retrieval or data processing are not taxable. The regulation contemplates that charges for access to an on-line computer database fall within this category. Charges for the inquiry or access are generally not taxable, but charges, if any, for transmission of the data are generally subject to the Telecommunications Excise Tax. If telecommunications retailers provide both transmission and data processing services, the charges are subject to tax unless the charges for each are disaggregated and separately identified in the books and records of the retailers.

Charges for cable television services, whether regular cable, Pay Per View, or dedicated advertising, are generally not subject to the Telecommunications Excise Tax so long such charges do not include a component for line time and they are disaggregated and separately identified. Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. However, please note that persons providing customers with Internet access who also provide customers the use of telecommunications services, and assess customers charges for the use of such services, are considered to be telecommunications retailers and will generally incur Telecommunications Excise Tax on charges made for such services.

You also request information about the taxation of "value cards" where long distance or other telecommunication services are paid for in advance of usage. Please be advised the Department has determined where such arrangements include prepayments for telephone or telecommunications services, they are not taxable under the Telecommunications Excise Tax Act. Rather, they are subject to Retailers' Occupation Tax and Use Tax liabilities. Effective January 1, 2001 prepaid telephone calling card arrangements became taxable as tangible personal property under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Service Use Tax Act and Use Tax Act. See Public Act 91-0870.

The sale of telephone cord, coaxial cable, telephone adapters, cable connectors and any other tangible personal property at truck stops would be subject to Illinois Retailers' Occupation Tax liabilities (6.25% rate) based upon gross receipts, and would also be subject to applicable local Retailers' Occupation Tax liabilities. If such items are sold to truckstops for the purpose of resale,

the transaction would be a nontaxable sale for resale if the seller obtains a properly completed Certificate of Resale form the retail truckstop. An Illinois Certificate of Resale must contain the items of information set out in 86 Ill. Adm. Code 130.1405, enclosed.

Regarding the question about taxation of the "membership fees," there would have to be an apportionment between amounts subject to Retailers' Occupation Tax and Telecommunications Excise Tax. Under the situation set out in your letter where items of tangible personal property are transferred in consideration for payment of a "membership fee," the Department cannot agree with your conclusion that such items are being "given away." The portion of the membership fee that represents payment for the "starter kit" items – phone, cord, cable, manual, guide and cards would be gross receipts subject to State and applicable local Retailers' Occupation Tax liabilities. The portion of the membership fee that represents charges made for telecommunications would be gross charges for "the act or privilege of originating or receiving telecommunications in this State" subject to the Telecommunications Excise Tax.

As noted above, the Telecommunications Excise Tax is imposed on 7% of the gross charges and gross charges means the amount paid for the act or privilege of receiving or originating telecommunications in Illinois. The *amount paid* means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid, 35 ILCS 630(2)(b). Your letter does not contain sufficient information for us to determine if a customer's service address is ascertainable for the telecommunications service you describe. We urge you to review the following definition of "service address". "Service address" means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

Your letter mentions that you offer teleconferencing services. Teleconferencing represents an especially difficult application of the term "service address". We have discovered that taxpayers are using three methods of calculating the tax, and the first two involve the definition of service address. The first is that some taxpayers calculate the Telecommunications Excise Tax based upon the location of the bridging equipment. The second is that some calculate the Telecommunications Excise Tax based upon the customer's billing address. The third is that some consider the teleconferencer as a user of telecommunications and pay tax to their telecom suppliers.

The multi-state group of tax administrators known as the Streamlined Sales Tax Project (SSTP) is currently examining this question. We understand the alternatives are:

- (1) The telecommunications tax would be based upon the location of the teleconferencer's equipment,
- (2) The telecommunications tax would be based upon the billing address of the customer.

We do not know which option the SSTP will ultimately adopt. For that reason, we suggest that you continue to calculate the tax as you have been doing. When the SSTP adopts a position, the Department of Revenue will promulgate a rule and give it prospective application.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.